

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-379-C

In Re:)	
Application of Cincinnati Bell Any)	
Distance, Inc. for a Certificate of Public)	
Convenience and Necessity to Provide)	SETTLEMENT AGREEMENT
Resold Local Exchange Services and for)	
Flexible Regulation of its Local Services)	

This Settlement Agreement ("Settlement Agreement") is made by and among the Office of Regulatory Staff ("ORS") and Cincinnati Bell Any Distance, Inc. ("CBAD" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party");

WHEREAS, on September 4, 2009, CBAD filed its Application requesting: (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to provide resold local exchange services; (ii) flexible regulation for its local exchange telecommunications services consistent with Order No. 98-165 in Docket No. 97-467-C; (iii) waiver of certain regulations of the Public Service Commission of South Carolina ("Commission"), specifically Regulation 103-610 regarding location of records, and Regulation 103-631 concerning publishing and distributing local exchange directories; and (iv) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts ("USOA");

WHEREAS, on September 10, 2009, counsel for ORS entered a Notice of Appearance in this matter;

WHEREAS, on September 16, 2009, the Commission issued its Order No. 2009-665 by which the Commission appointed Randall Dong, Esquire as the Hearing Examiner in this matter;

WHEREAS on September 17, 2009, the Commission issued a Notice of Filing and Hearing and established a return date of October 19, 2009, for the filing of letters of protest or petitions to intervene and established a hearing date of December 14, 2009 for the application to be heard before a hearing examiner;

WHEREAS, on November 2, 2009, the Company filed the direct testimony of D. Scott Ringo, Jr. with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by the Company and its requests: (i) for a Certificate of Public Convenience and Necessity to provide resold local exchange services within the State of South Carolina; (ii) for flexible regulation for its local exchange telecommunications services consistent with Order No. 98-165 in Docket No. 97-467-C; (iii) for waiver of certain of the Commission Regulations, specifically Regulation 103-610 regarding location of records, and Regulation 103-631 concerning publishing and distributing local exchange directories, and (iv) for waiver of any requirement to maintain financial records in conformance with the USOA;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of the Company to provide the services requested in the Application;

WHEREAS, ORS has reviewed the Application and the financial data provided by the Company, and ORS has calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by the Company;

WHEREAS, ORS has reviewed the pre-filed testimony of D. Scott Ringo, Jr.;

WHEREAS, as a result of its investigations, ORS has determined: (a) the Company intends to offer resold local services such as traditional end-to-end business services including local and long distance calling, IP based offerings, conference calling, private line and other high capacity services; (b) the Company's officers possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) the Company's proposed tariffs with the amendments as agreed to in this Settlement Agreement comply with Commission statutes and regulations; (d) the services provided by the Company will meet the service standards required by the Commission; (e) the provision of services by the Company will not adversely impact the availability of affordable telecommunications services; (f) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates; and (g) the provision of local services by the Company will not adversely impact the public interest;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree that CBAD's Application and exhibits to the Application are incorporated into this Settlement Agreement and made a part hereof;

2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of the Company's witness D. Scott Ringo, Jr. without cross-examination by ORS;

3) The Company submitted financial data, which was provided as Exhibit C to its Application, and which financial data is incorporated by reference;

4) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide resold local exchange telecommunications services within the state of South Carolina;

5) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2008) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in the State of Ohio, and the Company agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2008) or § 58-9-1070 (Supp. 2008). ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties and compliance with any state or federal regulation;

6) ORS does not oppose the Company's request for waiver of 26 S.C. Code Ann.

Regs. 103-631 which requires the publication and distribution of directories, and CBAD agrees to make arrangements with publishers of local directories in South Carolina to include the names and telephone numbers of CBAD's subscribers and customers in local directories, unless a subscriber indicates his/her desire for an unpublished telephone number.

7) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts ("USOA"). The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2008) provides that the ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission's jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses associated with its South Carolina operations for compliance with programs such as but not limited to the Universal Service Fund ("USF"), the Interim LEC Fund, dual party relay service fund, and gross receipts. The Company agrees to complete the reporting forms for such programs as but not limited to USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

8) ORS does not oppose the Company's requests: (a) for flexible regulation for its local telecommunications service offerings consistent with Order No. 98-165 in Docket No. 97-467-C, such flexible regulation including specifically (i) adoption of a competitive rate structure incorporating maximum rate levels with the flexibility for rate adjustment below the maximum

rate levels and (ii) presumptively valid tariff filings upon filing subject to an investigation of such tariff filing being instituted within thirty (30) days .

9) The Company agrees to resell the services only of those local exchange providers authorized to do business in South Carolina by the Commission. The Company agrees to notify ORS and the Commission, in writing, of its underlying carriers and if CBAD changes its underlying carriers;

10) The Company agrees to file necessary financial information with the Commission and ORS for universal service fund reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as CBAD. The Parties agree that such reports shall be filed pursuant to ORS's instructions and monies shall be remitted in accordance with the directions of the ORS and the Commission requirements.

11) The Company agrees to maintain its books and records associated with its South Carolina operations in a manner that would permit ORS to examine any of CBAD's reports filed with the Commission and provided to ORS.

12) The Company agrees to file with the Commission and ORS a completed authorized utility representative forms within thirty (30) days of the Commission's order.

13) The Company agrees to comply with South Carolina Code Ann. § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, CBAD agrees to adhere to the FCC's rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall

remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

14) To the extent necessary, the Company agrees to engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;

15) The Company agrees to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," also known as 911 services." At the time the Company offers or provides any service that would implicate Title 23, Chapter 47, the Company agrees to contact the appropriate authorities regarding 911 services in the counties and cities where it will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding the Company's operations. Attached as Exhibit 1 to this Settlement Agreement is a memorandum from the State 911 Office which provides contact information for the County 911 Coordinators;

16) The Company agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

17) The Company agrees to file a final revised tariff with both the ORS and the Commission within thirty days of the Commission Order granting certification, and the revised tariff shall reflect and be in accordance with ORS's recommendations as set forth in the summary attached as Exhibit 2 to this Settlement Agreement. Further, the Company agrees to file and maintain its tariff with the Commission electronic tariff filing system.

18) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

19) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

20) The Parties represent that the terms of this Settlement Agreement are based upon full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party;

21) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation.

22) This Settlement Agreement shall be interpreted according to South Carolina law.

23) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

WE AGREE:

Representing the Office of Regulatory Staff

Shealy Boland Reibold

Shealy Boland Reibold, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
Telephone: (803) 737-0863
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11/14/09

Date

WE AGREE:

Representing Cincinnati Bell Any Distance, LLC

John J. Pringle, Jr.

John J. Pringle, Jr., Esquire
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1501 Main Street, 5th Floor
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11/16/09

Date

STATE OF SOUTH CAROLINA
State Budget and Control Board
OFFICE OF RESEARCH & STATISTICS

EXHIBIT 1

MARK SANFORD, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

RICHARD ECKSTROM
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

REMBERT C. DENNIS BUILDING
1000 ASSEMBLY STREET, SUITE 425
COLUMBIA, SOUTH CAROLINA 29201

Bobby Bowers
DIRECTOR

August 2, 2004

To: Telephone Companies New to South Carolina

In an effort to continue providing quality emergency services to the citizens of South Carolina, the State 911 Office requests that before beginning telephone services in a county, you contact the 911 Coordinator in that county. This will allow both parties to obtain important information about providing 911 services in that county. If you have already begun services, then contact the coordinator as soon as possible.

A list of County 911 Coordinators can be found on the South Carolina E911 homepage at www.ors.state.sc.us/digital/E-911.ASP. If you have any questions related to 911 in South Carolina, you may contact E911 Coordinations at the Office of Research and Statistics at 803-734-3883. The person responsible for this can also be found on the 911 homepage. Please be aware that some cities may have their own E911 systems, these are also listed on the 911 homepage. These city coordinators will need to be contacted in addition to the county coordinators.

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Tariff Recommendations for Cincinnati Bell Any Distance Local Exchange Tariff
(Docket No. 2009-379-C)

Original Title Page: The Company should include a regulatory contact phone number and/or email address on title page.

Section 1—Application of Tariff and Definitions

Original Page 5: The Company should include the following definition—“ORS: the South Carolina Office of Regulatory Staff.”

Section 2—Regulations

Original Page 9 D.2: The Company should modify the deposit paragraph as follows per 26 S.C. Code Regs. 103-621—“Applicants or customers whose financial condition is not acceptable to the Company may be required to make, at any time, a cash deposit for the purpose of guaranteeing final payment for service. For a new customer, a maximum deposit may be required up to an amount equal to an estimated two month total bill (including toll and taxes). For an existing customer, a maximum deposit may be required up to an amount equal to the total actual bills of the highest two consecutive months within the preceding six months. Interest on each deposit will be payable...”(from this point the paragraph can remain unchanged).

Original Page 11 D.4.i: The Company should modify the language as follows—“Customers will be charged a fee no greater than permitted by S.C. Code Ann. § 34-11-70 on all checks issued to the Company which are returned due to insufficient funds. The current returned check charge is \$30.00. At the discretion of the...”

Original Page 11 D.4.j: The Company should modify the language per 26 S.C. Code Regs. 103-622 as follows—“A maximum of one and one half percent (1 ½%) may be added to any unpaid balance brought forward from the previous billing date to cover the cost of collection and carrying accounts in arrears. This method of late payment charge will be made in lieu of any other penalty.”

Original Page 13 D: The Company should include a maximum as well as a current rate for both maintenance service charges (per Flexible Regulation).

Original Page 14 D.9: The Company should include the following language at the end of the paragraph—“All ICB’s will be made available to the Commission and the ORS upon request.”

Original Page 16 D.12: The Company should remove references to gross receipts and net receipts per Commission Order.

Original Page 17 E.1 &.2: The Company should remove this language in its entirety since it requests a waiver from the requirement to publish a directory.

Section 3—Directory Listings

Original Page 5 B.: The Company should include maximum rates in addition to the current rates (both recurring and non-recurring) per Flexible Regulation.

Section 4—Directory Assistance Service

Original Page 1 B.: The Company should include maximum rates in addition to the current rates for directory assistance per Flexible Regulation.

Section 5—Operator Assistance

Original Page 2 B.1 &.2: The Company should include maximum rates in addition to the current rates for General Assistance, Busy Line Verification and Busy Line Interrupt.

Section 6—Business Access Lines

Original Page 2 A.3.: The Company should include maximum rates in addition to the current rates for all services.

Section 7—PRI Service

Original Page 5 B.1 & .2: The Company should include maximum rates in addition to current rates for all services.

Section 8—Exchange Areas

--There are no recommendations for Section 8.

Additional Recommendations for Local Exchange Tariff

- 1) The Company may be required to file a bond in order for the Company to comply with new 26 S.C. Code Regs. 103-607.
- 2) If the Company charges any installation, connection, maintenance, or termination charges, etc. (in addition to the services listed in the tariff), these additional charges and the descriptions of the charges should be listed in the tariff with their current and maximum rates.
- 3) The Company is applying for Flexible Regulation. Therefore, the Company will include maximum rates as well as current rates for all services within the Local Exchange Tariff.

- 4) The Company should also provide tariffs and tariff revisions to the South Carolina Public Service Commission as well as the South Carolina Office of Regulatory Staff (26 S.C. Code Regs. 103-629).**
- 5) The Company should include language as it relates to Marketing Practices (SC PSC Order No. 95-658).**

As a telephone utility under the regulation of the Public Service Commission of South Carolina, the Company hereby asserts and affirms that as a reseller of intrastate telecommunications service, the Company will not indulge or participate in deceptive or misleading telecommunications marketing practices to the detriment of consumers in South Carolina, and the Company will comply with those marketing procedures, in any, set forth by the Public Service Commission. Additionally, the Company will be responsible for the marketing practices of its contracted telemarketers for compliance with this provision. The Company understands that violation of this provision could result in a rule to Show Cause as to the withdrawal of its certification to complete intrastate telecommunications traffic within the state of South Carolina. (Commission Order No. 95-658)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-379-C

IN RE: Application of Cincinnati Bell Any Distance,
 Incorporated for a Certificate of Public)
 Convenience and Necessity to Provide Resold) **CERTIFICATE OF**
 Local Exchange Services and for Flexible) **SERVICE**
 Regulation of its Local Exchange Services)

This is to certify that I, Chrystal L. Morgan, have this date served one (1) copy of the **SETTLEMENT AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Douglas E. Hart, Esquire
Cincinnati Bell Any Distance Incorporated
441 Vine Street, Suite 4192
Cincinnati, OH, 45202

D. Scott Ringo Jr., Assistant Corporate Secretary
Cincinnati Bell Any Distance, Incorporated
221 East Fourth Street, Room 1280
Cincinnati, OH, 45201

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Chrystal L. Morgan

November 16, 2009
Columbia, South Carolina